

Message Text

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ACTION EA-09

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TO SECSTATE WASHDC 1413

INFO COMUSJAPAN YOKOTA

RUHQHQAXCINCPAC HONOLULU

AMCONSUL SAPPORO

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CINCPAC ALSO FOR POLAD

E.O. 11652: N/A

TAGS: PINT, MPOL, JA

SUBJECT: JAPAN SELF DEFENSE FORCES CONSTITUTIONALITY

REF: SAPPORO 0098 (NOTAL)

SUMMARY: THE SAPPORO HIGH COURT ON AUGUST 5 REVERSED A LOWER COURT DECISION WHICH HAD PRONOUNCED THE JAPAN SELF DEFENSE FORCES "UNCONSTITUTIONAL". THE LATEST DECISION HOWEVER DODGED THE QUESTION OF CONSTITUTIONALITY AND WILL BE APPEALED TO THE JAPANESE SUPREME COURT. END SUMMARY.

1. ON AUGUST 5 THE SAPPORO HIGH COURT REVERSED THE DECEMBER 1973 DECISION OF A LOWER COURT THAT THE JAPANESE SELF DEFENSE FORCES (JSDF) WERE "UNCONSTITUTIONAL" (SEE REFTTEL FOR BACKGROUND). THE ISSUES ARE COMPLICATED AND PRESS REPORTS ON THE DECISION ARE SOMEWHAT CONFUSED. THE GENERAL THRUST OF THE COURT'S DECISION AS REPORTED BY THE PRESS FOLLOWS.

2. THE SAPPORO HIGH COURT DODGED THE ISSUE OF CONSTITUTIONALITY, AND INSTEAD RULED THAT USE OF THE AREA BY THE SELF DEFENSE FORCE

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HAD NO RELATION TO THE ISSUE IN LITIGATION, I.E., THE CANCELLATION

OF THE STATE FORESTRY RESERVE DESIGNATION (PARA 3 REFTTEL). AS FOR THIS ISSUE THE COURT RULED THAT THE GOVERNMENT HAD TAKEN ADEQUATE STEPS, FOR EXAMPLE, FLOOD CONTROL MEASURES, TO PREVENT DAMAGE TO THE PLAINTIFF'S INTERESTS.

3. THE COURT DANCED AROUND THE CONSTITUTIONAL ISSUE. IT SAID THAT THE ESTABLISHMENT AND MANAGEMENT OF THE DEEFENSE FORCES WERE THE BUSINESS OF THE DIET. IT WENT ON TO SAY THAT ACTS OF STATE OF A "HIGHLY POLITICAL NATURE" SUCH AS GOVERNMENT POLICY ON DIPLOMACY AND DEFENSE SHOULD NOT BE SUBJECT TO JUDICIAL EXAMINATION UNLESS SUCH ACTS CONSTITUTE A CLEAR VIOLATION OF THE CONSTITUTION. IT ASSERTED THAT, ALTHOUGH THE CONSTITUTION BANNED ARMED FORCES OF AN "OFFENSIVE" NATURE, IT WAS EVIDENT THAT THE DEFENSE FORCES WERE NOT OF THIS CHARACTER. HAVING APPARENTLY THUS SET THE GROUND FOR AN HISTORIC DECISION, THE COURT INSTEAD CONCLUDED THAT THERE WAS NO NEED TO EXAMINE THE CONSTITUTIONAL ISSUE.

4. REACTION TO THE SAPPORO DECISION HAS FALLEN ALONG PREDICTABLE LINES. GOVERNMENT AND LDP SPOKESMAN HAVE HAILED THE DECISION AS VINDIATING THEIR POSITION. OPPOSITION REACTION HAS RANGED FROM EXPRESSIONS OF OUTRAGE BY THE JSP TO A RATHER VAGUE STATEMENT BY THE DSP STRESSING THE DECISION'S IMPORTANCE BUT IMPLYING THAT THE COURT SHOULD HAVE ADDRESSED THE CONSTITUTIONAL ISSUE MORE SQUARELY. SPOKESMAN FOR THE PLAINTIFFS PROMISED TO CONTINUE THEIR STRUGGLE AND AN APPEAL TO THE SUPREME COURT IS EXPECTED. SHOESMITH

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